

John E. Selent  
502-540-2315  
[john.selent@dinslaw.com](mailto:john.selent@dinslaw.com)

April 7, 2004

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APR 7 2004

PUBLIC SERVICE  
COMMISSION

Hon. Thomas M. Dorman  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

***Re: In the Matter of Ballard Rural Telephone Cooperative Corporation, Inc. v.  
Jackson Purchase Rural Electric Cooperative Corporation, before the Public  
Service Commission of the Commonwealth of Kentucky, Case No. 2004-00036***

Dear Mr. Dorman:

Enclosed is an original and 11 copies of the following documents for filing in the above-styled case:

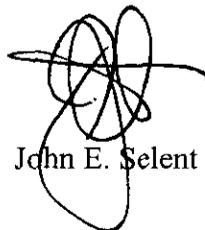
1. Verified Prefiled Direct Testimony of Harlon E. Parker on behalf of Ballard Rural Telephone Cooperative Corporation, Inc.; and
2. Verified Prefiled Direct Testimony of Jim Sharpe on behalf of Ballard Rural Telephone Cooperative Corporation, Inc.

Please return a file-stamped copy of each document to me in the enclosed self-addressed, postage-prepaid envelope.

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/bmt

Hon. Thomas M. Dorman  
April 7, 2004  
Page 2

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Enclosures

cc: Harlon E. Parker  
James K. Sharpe

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31471-1

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

*In the Matter of:*

BALLARD RURAL TELEPHONE )  
COOPERATIVE CORPORATION, INC. )  
Complainant )  
v. )  
JACKSON PURCHASE RURAL )  
ELECTRIC COOPERATIVE )  
CORPORATION )  
Defendant )

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PUBLIC SERVICE  
COMMISSION

Case No. 2004-00036

VERIFIED PREFILED DIRECT TESTIMONY<sup>o</sup>  
OF  
HARLON E. PARKER  
ON BEHALF OF  
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.

April 7, 2004

  
\_\_\_\_\_  
John E. Selent  
DINSMORE & SHOHL LLP  
1400 PNC Plaza  
500 W. Jefferson Street  
Louisville, KY 40202  
(502) 540-2300 (Office)  
(502) 585-2207 (Fax)  
john.selent@dinslaw.com (E-Mail)

COUNSEL TO BALLARD RURAL  
TELEPHONE COOPERATIVE  
CORPORATION, INC.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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*In the Matter of:*

BALLARD RURAL TELEPHONE )  
COOPERATIVE CORPORATION, INC. )  
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v. )

Case No. 2004-00036

JACKSON PURCHASE RURAL )  
ELECTRIC COOPERATIVE )  
CORPORATION )  
Defendant )

VERIFIED PREFILED DIRECT TESTIMONY  
OF  
HARLON E. PARKER  
ON BEHALF OF  
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.

April 7, 2004

I.  
BACKGROUND

1 Q.1. WHAT IS YOUR NAME?

2 A. My name is Harlon E. Parker.

3 Q.2. WHAT IS YOUR OCCUPATION?

4 A. I am the General Manager of Ballard Rural Telephone Cooperative Corporation,  
5 Inc. ("Ballard Telephone")

6 Q.3. WHAT IS YOUR BUSINESS ADDRESS AND TELEPHONE NUMBER?

1 A. My business address is 159 W. 2nd Street, LaCenter, Kentucky and my business  
2 telephone number is (270) 665-5186.

3 **Q.4. HOW LONG HAVE YOU BEEN THE GENERAL MANAGER OF BALLARD**  
4 **TELEPHONE?**

5 A. I have been General Manager of Ballard Telephone since 1981.

6 **Q.5. WHAT ARE YOUR DUTIES AND RESPONSIBILITIES AS GENERAL**  
7 **MANAGER?**

8 A. I am responsible for the day-to-day operations of Ballard Telephone.

9 **Q.6. AS GENERAL MANAGER, WHAT IS YOUR PHILOSOPHY OF MANAGING**  
10 **BALLARD TELEPHONE?**

11 A. My philosophy is simple. It is to provide a variety of quality telecommunications  
12 services at an affordable price to the residential and business customers served by Ballard  
13 Telephone.

14 **Q.7. HOW LONG HAVE YOU WORKED IN THE TELEPHONE INDUSTRY?**

15 A. I have over 45 years of experience in the rural telephone industry and I have  
16 worked at Ballard Rural since 1956.

17 **Q.8. WHAT ARE YOUR TIES TO THE GEOGRAPHIC AREA SERVED BY**  
18 **BALLARD TELEPHONE?**

19 A. I live, work and raise my family in rural, western Kentucky. I serve on the  
20 Ballard County Rural Economic Development Board. I spend a great deal of time  
21 working on economic development issues affecting my rural Kentucky home.

1 **Q.9. WHAT GEOGRAPHIC AREAS IN WESTERN KENTUCKY DOES BALLARD**  
2 **TELEPHONE SERVE?**

3 A. It serves all of Ballard County and rural western McCracken County.

4 **Q.10. HOW MANY SUBSCRIBERS DOES BALLARD TELEPHONE HAVE?**

5 A. It has about 5,000 subscribers in Ballard County and about 1,700 subscribers in  
6 rural western McCracken County, for a total of about 6,700 subscribers.

7 **Q.11. IS BALLARD TELEPHONE A COOPERATIVE AND WHAT DOES THAT**  
8 **MEAN?**

9 A. Yes; and the fact that Ballard Telephone is a cooperative means that it is owned  
10 by its subscribers who elect a board of directors who govern the cooperative. I answer to  
11 this Board of Directors.

12 **Q.12. WHAT TELECOMMUNICATION SERVICES DOES BALLARD TELEPHONE**  
13 **PROVIDE TO ITS SUBSCRIBERS?**

14 A. It provides local exchange carrier telephone services and internet/broadband  
15 services to its customers. These services are of a high quality and are provided at an  
16 affordable price which are among the lowest in Kentucky, a fact of which I am very  
17 proud.

18 **II.**

19 **JACKSON PURCHASE ENERGY CORPORATION**

20 **("JACKSON PURCHASE")**

21 **Q.13. WHAT IS JACKSON PURCHASE?**

1 A. It is a cooperative, meaning it is owned by its customers, and it provides  
2 electricity to its customers.

3 **Q.14. DO YOU KNOW WHETHER JACKSON PURCHASE IS ALSO A PROVIDER**  
4 **OF CABLE TELEVISION SERVICES, OR THEIR EQUIVALENT?**

5 A. I do not think so. But, I do know that with advances in technology, it is possible  
6 for a telephone utility to deliver video services, using its copper telephone cable, which  
7 would be the equivalent of cable television services, to its customers. I see no reason  
8 why Jackson Purchase could not do the same, that is, use its utility poles to deliver cable  
9 television services, or their equivalent. I do know that Ballard Telephone could, at least,  
10 technologically do so, if it wanted to. And, Jackson Purchase, like Ballard Telephone,  
11 could also offer telecommunications services.

12 **III.**

13 **THE DISPUTE WITH JACKSON PURCHASE**

14 **Q.15. WHY DID BALLARD TELEPHONE FILE THE COMPLAINT IN THIS**  
15 **PROCEEDING AGAINST JACKSON PURCHASE ENERGY CORPORATION**

16 A. Ballard Telephone filed the complaint in this case in order to protect its customers  
17 from the adverse consequences associated with paying unfair, unjust, and unreasonable  
18 rates, as well as from the adverse consequences of paying rates that are discriminatory,  
19 for access to the utility poles of Jackson Purchase.

20 **Q.16. WHEN DID BALLARD TELEPHONE SIGN A POLE ATTACHMENT**  
21 **AGREEMENT WITH JACKSON PURCHASE?**

1 A. On June 5, 1954, Ballard Telephone signed a General Agreement for Joint Use of  
2 Wood Poles (the "1954 Agreement"). (The 1954 Agreement is Exhibit 1 to the  
3 Complaint.) The 1954 Agreement sets forth the terms and conditions, and the rates  
4 pursuant to which each party would make pole attachments available to the other party.

5 **Q.17. HOW LONG WAS THE 1954 AGREEMENT TO REMAIN IN EFFECT?**

6 A. It was to remain in effect for 25 years, measured from 1954; and, thereafter, it  
7 would terminate upon the giving of written notice by either party to the other party not  
8 less than three (3) years prior to the date of the proposed termination date.

9 **Q.18. WHAT WERE THE INITIAL RATES UNDER THE 1954 AGREEMENT?**

10 A. The rates range from \$.60 to \$1.30 per pole, depending upon height.

11 **Q.19. WERE THE POLE ATTACHMENT RATES EVER ADJUSTED IN THE 1954**  
12 **AGREEMENT?**

13 A. Yes. In a letter agreement of February 2, 1973 the 1973 rates were adjusted to  
14 \$1.90 and then in 1974 the rates were adjusted to a maximum of \$3.00 per pole, the  
15 current rate regardless of height.

16 **Q.20. WERE ANY OF THE RATES UNDER THE 1954 AGREEMENT EVER FILED**  
17 **OR APPROVED BY THE PUBLIC SERVICE COMMISSION OF THE**  
18 **COMMONWEALTH OF KENTUCKY?**

19 A. No, not to the best of my knowledge.

20 **Q.21. WHAT HAPPENED IN SEPTEMBER OF 2002?**

21 A. Jackson Purchase proposed a pole attachment rate increase of approximately  
22 500%. Specifically, Jackson Purchase proposed to raise its pole attachment rates for

1 Ballard Telephone from \$3.00 per pole to either \$13.79 or \$17.75 per pole, depending  
2 upon height.

3 **Q.22. WHAT HAPPENED IN DECEMBER OF 2002?**

4 A. Jackson Purchase sent Ballard Rural a draft pole attachment agreement and in an  
5 accompanying transmittal letter proposed to bill all poles at \$13.79 (Jackson Purchase)  
6 and \$17.42 (Ballard Telephone). This is approximately a 460% increase.

7 **Q.23. WAS THIS PROPOSAL ACCEPTABLE TO BALLARD TELEPHONE?**

8 A. No, it was not.

9 **Q.24. WHY NOT?**

10 A. Ballard Telephone asked for, but was not provided with any cost justification for  
11 this huge increase in pole attachment rates.

12 **Q.25. WHAT HAPPENED ON APRIL 23, 2003?**

13 A. Jackson Purchase sent Ballard Telephone a letter stating as follows:

14 Unfortunately, it appears that we are unable to reach an agreement  
15 on a schedule of rentals for pole attachments in order to amend the  
16 Joint-Use of Wood Poles Agreement ("Joint Use Agreement").  
17 Accordingly, please allow this to serve as notice, pursuant to  
18 Article XX of the current joint-use agreement between our  
19 companies, of Jackson Purchase Energy Corporation's ("JPEC")  
20 intent to terminate this Agreement.

21  
22 As per the terms of the joint use agreement, the current agreement  
23 will terminate effective three years from the date of your receipt of  
24 this letter. You should begin removal of your attachments from  
25 our poles no later than six months from the date of your receipt of  
26 this letter. All attachments should be removed from JPEC's poles  
27 prior to the expiration of the three-year period. We will, of course,  
28 do the same. Further, as of this date, JPEC requests that your  
29 company make no new pole attachments without the prior, written  
30 consent of JPEC.  
31

1 **Q.26. WHAT WOULD BE THE CONSEQUENCE TO BALLARD TELEPHONE IF IT**  
2 **HAD TO REMOVE ITS TELECOMMUNICATIONS FACILITIES FROM THE**  
3 **UTILITY POLES OF JACKSON PURCHASE?**

4 A. Well, that's a good question.

5 First, Ballard Telephone would have to incur the substantial cost of removing its  
6 facilities from the utility poles of Jackson Purchase, including a difficult-to-calculate,  
7 one-time cost of retirement resulting in an amortization charge of substantial size, most  
8 likely in the seven-figure range (\$1,000,000.00). Second, Ballard Telephone would have  
9 to incur the substantial cost of duplicating the poles of Jackson Purchase which it  
10 presently occupies. This would be a complex and time-consuming endeavor from both a  
11 technical and legal prospective. It would require Ballard Telephone to determine whether  
12 it needs to acquire right-of-way and then to determine how to go about acquiring that  
13 right-of-way from state, local (city and county), and private entities. Ballard Telephone  
14 would then face the monumental task of designing, engineering and building those  
15 facilities. Finally, the duplication of the Jackson Purchase facilities presently occupied  
16 by Ballard Telephone would not be very attractive because where you now have one  
17 pole, you would have two.

18 **Q.27. IF BALLARD TELEPHONE HAD TO DUPLICATE THE UTILITY POLES OF**  
19 **JACKSON PURCHASE, WOULD THIS IMPAIR THE ABILITY OF BALLARD**  
20 **TELEPHONE TO DELIVER ITS TELECOMMUNICATIONS SERVICE TO ITS**  
21 **CUSTOMERS?**

1 A. It very well could. Ballard Telephone occupies many more utility poles  
2 belonging to Jackson Purchase than Jackson Purchase occupies utility poles belonging to  
3 Ballard Telephone. (Ballard Telephone is on 3,292 poles belonging to Jackson Purchase;  
4 and Jackson Purchase is on 170 utility poles belonging to Ballard Telephone.) Ballard  
5 Telephone would have to really refocus its efforts on this substantial construction project  
6 of erecting many thousands of utility poles and removing its facilities from the utility  
7 poles of Jackson Purchase. This could require Ballard Telephone to spend substantial  
8 resources consisting of time, labor, and money on what we consider to be an unnecessary  
9 endeavor, instead of focusing on the delivery of a variety of quality telecommunication  
10 services to our customers at affordable prices.

11 **Q.28. HOW MUCH WOULD IT COST BALLARD TELEPHONE TO DUPLICATE**  
12 **THE FACILITIES OF JACKSON PURCHASE WHICH BALLARD**  
13 **TELEPHONE PRESENTLY OCCUPIES PURSUANT TO THE 1954**  
14 **AGREEMENT?**

15 A. It would cost, probably, in the millions of dollars. Presently, Ballard Telephone  
16 occupies 3,292 poles of Jackson Purchase and the replacement cost of each pole, on  
17 average, is approximately \$585.00, and multiplying the number of poles times this cost  
18 equals \$1.9 Million (3,292 x \$585). And, that would only be part of the cost. Allowing  
19 Jackson Purchase to make Ballard Telephone spend this kind of money is economic  
20 blackmail, pure and simple.

21 **Q.29. DOES BALLARD TELEPHONE BELIEVE THAT THIS REMOVAL**  
22 **ALTERNATIVE WOULD BE REASONABLE?**

1 A. Absolutely not. It would be wholly unreasonable to require Ballard Telephone to  
2 spend this kind of money to duplicate facilities which we have occupied for so long just  
3 because Ballard Telephone will not pay the exorbitant pole attachment rates now  
4 demanded by Jackson Purchase.

5 **Q.30. SINCE 1970, APPROXIMATELY HOW MUCH HAS BALLARD TELEPHONE**  
6 **PAID JACKSON PURCHASE FOR POLE ATTACHMENTS PURSUANT TO**  
7 **THE 1954 AGREEMENT?**

8 A. It has paid Jackson Purchase approximately \$122,723.00.

9 **Q.31. DOES BALLARD TELEPHONE WANT THIS MONEY BACK AND WHY?**

10 A. Yes, because the rates were not tariffed.

11 **Q.32. WHAT RATES DO BALLARD TELEPHONE BELIEVE ARE FAIR, JUST AND**  
12 **REASONABLE AND NON-DISCRIMINATORY?**

13 A. Ballard Telephone believes that a reasonable pole attachment rate would be either  
14 the rates established pursuant to the 1954 Agreement (if approved by the Public Service  
15 Commission), or the tariffed pole attachment rates of Jackson Purchase applicable to  
16 CATV (community antennae television or cable TV) providers.

17 **Q.33. APART FROM RATES, DOES BALLARD TELEPHONE BELIEVE THAT IT**  
18 **SHOULD OCCUPY THE UTILITY POLES OF JACKSON PURCHASE**  
19 **PURSUANT TO THE TERMS AND CONDITIONS OF JACKSON PURCHASE**  
20 **CATV POLE ATTACHMENT TARIFFS OR PURSUANT TO THE 1954**  
21 **AGREEMENT?**

1 A. Ballard Telephone would find either alternative to be reasonable at this time.  
2 Ballard Telephone believes it would be reasonable to occupy the utility poles of Jackson  
3 Purchase pursuant to the 1954 Agreement (if approved by the Public Service  
4 Commission) or the CATV pole attachment tariffs of Jackson Purchase. In all events it  
5 would be unreasonable to require Ballard Telephone to vacate the utility poles of Jackson  
6 Purchase and install its own utility poles at a cost of well over \$1,900,000.00.

7 IV.

8 **INCREASE IN BALLARD TELEPHONE'S POLE ATTACHMENT RATES**

9 **Q.34. IF BALLARD TELEPHONE HAD TO PAY THE 460% POLE ATTACHMENT**  
10 **RATE INCREASE NOW DEMANDED BY JACKSON PURCHASE, WOULD**  
11 **THAT PLACE UPWARD PRESSURE ON BALLARD TELEPHONE'S RATES?**

12 A. Yes, because it would increase our pole attachment costs payable to Jackson  
13 Purchase to, approximately, almost \$45,000.00 per year (\$9,900.00 x 460%). This would  
14 increase Ballard Telephone's basic residential rate in excess of six percent (6%).

15 **Q.35. IF BALLARD TELEPHONE DECIDED NOT TO PAY THE 460% RATE**  
16 **INCREASE NOW DEMANDED BY JACKSON PURCHASE AND BUILT ITS**  
17 **OWN UTILITY POLES WOULD THAT PLACE UPWARD PRESSURE ON**  
18 **BALLARD TELEPHONE'S RATES?**

19 A. Yes, substantially; a cost of \$1,900,000 (*see Q and A. No. 28*) would place very  
20 substantial upward pressure on our local exchange carrier rates. No way around it.

21 **Q.36. THEN WHY NOT JUST PAY THE RATES DEMANDED BY JACKSON**  
22 **PURCHASE?**

1 A. That is not a reasonable alternative. Once you submit to blackmail, it never stops.  
2 Ballard Telephone customers really would be at the mercy of Jackson Purchase. We  
3 cannot live with a gun at our head, especially when it is held by someone who has  
4 demonstrated a willingness to pull the trigger.

5 V.

6 **CONCLUSION**

7 **Q.37. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY FOR THE**  
8 **COMMISSION?**

9 A. Yes.

10 ***First***, the Commission should approve Ballard Telephone paying Jackson  
11 Purchase pole attachment rates equal to those established under the 1954 Agreement or  
12 equal to those set forth in Jackson Purchase's CATV pole attachment tariffs. ***Second***, the  
13 Commission should order Jackson Purchase not to require Ballard Telephone to vacate  
14 the utility poles of Jackson Purchase now or even three years in the future. ***Third***, the  
15 Commission should require Jackson Purchase to continue to make its utility poles  
16 available to Ballard Telephone under either the terms and conditions of the 1954  
17 Agreement or the Jackson Purchase CATV pole attachment tariffs. Any other results  
18 would approve Jackson Purchase's abuse of its control of its utility poles, which are  
19 bottleneck facilities, to extort unfair, unjust, unreasonable and discriminatory rates from  
20 Ballard Telephone to the detriment of our 6,700 subscribers. ***And, finally***, Jackson  
21 Purchase should be required to refund the \$122,733.00 which Ballard Telephone has paid  
22 to Jackson Purchase in untariffed pole attachment rates since 1970.

1 **Q.38. DOES THIS CONCLUDE YOUR TESTIMONY?**

2 A. Yes, it does. And I thank the Public Service Commission for its time and  
3 attention to this important matter.

1 **VERIFICATION**

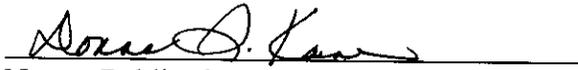
2  
3 Harlon E. Parker, after being duly sworn, states that he has read the foregoing Verified  
4 Prefiled Direct Testimony, and that the statements set forth therein are true to the best of his  
5 information and belief.

6  
7  
8   
9 Harlon E. Parker

10  
11  
12  
13 COMMONWEALTH OF KENTUCKY )  
14 ) SS:  
15 COUNTY OF Fayette )

16  
17 SUBSCRIBED AND SWORN to before me a notary public by Harlon E. Parker, to me  
18 known, this 7<sup>th</sup> day of April, 2004.

19  
20 My commission expires: March 25, 2006

21  
22  
23   
24 Notary Public, State at Large  
25  
26  
27

**CERTIFICATE OF SERVICE**

It is hereby certified that the Prefiled Direct Testimony of Harlon E. Parker on behalf of Ballard Rural Telephone Cooperative Corporation, Inc. was served by mailing a copy of the same by First Class United States Mail, postage prepaid, to the following individuals this 7th day of April, 2004:

W. David Denton  
Denton & Keuler, LLP  
555 Jefferson Street  
P.O. Box 929  
Paducah, KY 42002-0929

G. Kelly Nuckols  
President & CEO  
Jackson Purchase Energy  
Corporation  
2900 Irvin Cobb Drive  
P.O. Box 4030  
Paducah, KY 42002-4030



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**John E. Selent**  
**DINSMORE & SHOHL LLP**  
**1400 PNC Plaza**  
**500 W. Jefferson Street**  
**Louisville, KY 40202**  
**(502) 540-2300 (Office)**  
**(502) 585-2207 (Fax)**  
**john.selent@dinslaw.com (E-Mail)**

**COUNSEL TO BALLARD RURAL  
TELEPHONE COOPERATIVE  
CORPORATION, INC.**

*Prop 154*

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ELECTRIC COOPERATIVE )  
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Defendant )

VERIFIED PREFILED DIRECT TESTIMONY  
OF  
JAMES K. SHARPE  
ON BEHALF OF  
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.

April 7, 2004



John E. Selent  
DINSMORE & SHOHL LLP  
1400 PNC Plaza  
500 W. Jefferson Street  
Louisville, KY 40202  
(502) 540-2300 (Office)  
(502) 585-2207 (Fax)  
john.selent@dinslaw.com (E-Mail)

COUNSEL TO BALLARD RURAL  
TELEPHONE COOPERATIVE  
CORPORATION, INC.

COMMONWEALTH OF KENTUCKY  
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Case No. 2004-00036

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PUBLIC SERVICE  
COMMISSION

VERIFIED PREFILED DIRECT TESTIMONY  
OF  
JAMES K. SHARPE  
ON BEHALF OF  
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.

April 7, 2004

I.  
BACKGROUND

1 Q.1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION.

2 A. My name is James K. Sharpe. My business address is 106 Vanderbilt Drive,  
3 Lexington, KY 40517. The name of my firm is JKS Consulting, Inc. I am President of  
4 the firm.

5 Q.2. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND  
6 EXPERIENCE?

1 A. I graduated from Murray State University, Murray, Kentucky in 1971 with a  
2 Bachelor of Science in Economics and History. In addition, I completed a Master of  
3 Science in Economics from the same school in 1972. I completed all the course work  
4 required for a PhD in Economics at the University of Kentucky in 1975. I did not  
5 complete a dissertation.

6 After leaving the University of Kentucky, I accepted a position as an economist  
7 with the Development Cabinet, Commonwealth of Kentucky. In November 1979, I  
8 accepted a position as economist with the Kentucky Public Service Commission (the  
9 "Commission"). During the period from November 1979 to July 1986, I worked as an  
10 economist for the Commission in the electric telecommunications industries. In July  
11 1986, I assumed the position of Director of Research, Analysis, and Statistics at the  
12 Commission. My managerial responsibilities included cost of capital, cost of service,  
13 demand analyses, management audits, research assignments in the gas, electric, water,  
14 and telecommunications industries.

15 In April 1990, I resigned my position at the Commission and worked as an  
16 Associate with Utility and Economics, Inc. ("UEC"). While working with UEC, I  
17 completed various assignments with utilities and public utility commissions throughout  
18 the nation. This work included management audits, rate casework, regulatory consulting,  
19 telephone company arbitrations, and utility compliance audits. The Independent  
20 Telephone Group and Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard  
21 Telephone") have been clients since 1990. I have attached a resume to my testimony that  
22 identifies the companies and state commissions where I have worked.

23 I left UEC at the beginning of this year and opened my own firm.

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**II.**

**PURPOSE OF TESTIMONY**

**Q.3. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. I have been retained by Ballard Telephone to assist it in its dispute with Jackson Purchase Rural Electric Cooperative Corporation ("Jackson Purchase") over pole attachment rates. It is my understanding that Ballard Telephone and Jackson Purchase are currently operating under a joint-use pole attachment contract (the "1954 Agreement"). Jackson Purchase has proposed a substantial increase in rates and has demanded that Ballard Telephone either accept the rate increase or remove its attachments from Jackson Purchase's poles by September 26, 2006. It is also my understanding that Jackson Purchase did not provide Ballard Telephone with any cost justification for this unilateral rate increase. In particular, I am to review Jackson Purchase's proposed pole attachment rates and make recommendations concerning whether they meet the criteria of being fair, just, and reasonable, and nondiscriminatory, based on my experience working with public utility commissions.

**III.**

**THE COMMISSION'S JURISDICTION**

**Q.4. DOES THE COMMISSION HAVE JURISDICTION OVER POLE ATTACHMENT RATES?**

A. It is my understanding that the Commission asserted jurisdiction over pole attachment rates in Admin. Case No. 251, and related cases. This assertion of jurisdiction from an economic perspective makes sense. The ability to extract monopolistic profits stems from the existence of bottleneck facilities. Bottleneck facilities are facilities that

1 are not easily duplicated by the customer because of either, or both, economic or legal  
2 constraints. The right-of-ways and the poles located thereon are classic bottleneck  
3 facilities that are appropriately regulated by the Commission. The Federal  
4 Communications Commission, in an order implementing the Telecommunications Act of  
5 1996, has recognized this bottleneck characteristic of pole attachments by requiring that  
6 incumbent local exchange carriers ("ILEC") offer reasonable access to them to  
7 competitive local exchange carriers ("CLEC").

8 **Q.5. SHOULD THE COMMISSION REGULATE THE RATES TELEPHONE**  
9 **COMPANIES PAY TO ELECTRIC COMPANIES FOR POLE ATTACHMENTS?**

10 A. The Commission has traditionally permitted utilities to negotiate pole attachment  
11 contracts and rates; and, then those contracts are filed with the Commission. I think that  
12 it is appropriate, where the parties can agree on reasonable pole attachment rates and  
13 conditions for the Commission to minimize its involvement. However, when one party  
14 attempts to price its pole attachments in a matter that results in a blatant abuse of  
15 monopoly power, then the Commission should assert its jurisdiction. In Admin. Case  
16 No. 251, the Commission did just that, recognizing the monopoly characteristics of pole  
17 facilities. The Commission granted relief to the CATV complainants, which were the  
18 only parties requesting relief.

19 In this case, Ballard Telephone entered a joint-use contract with Jackson Purchase  
20 under what it considered fair, just, and reasonable, and nondiscriminatory rates. It has  
21 placed its facilities on Jackson Purchase's poles with the reasonable expectation that the  
22 negotiated rates would continue to be fair, just, and reasonable, and nondiscriminatory.  
23 Ballard Telephone now finds itself in a situation similar to that of the CATV

1 complainants in Admin. Case No. 251. In pursuing a new joint-use contract, Jackson  
2 Purchase has attempted to dictate pole attachment rates to Ballard Telephone without  
3 providing any cost justification. Ballard Telephone is thus forced to seek a remedy from  
4 the Commission that is consistent with the Commission's findings and orders in Admin.  
5 Case No. 251. It is only reasonable that the Commission regulate the rates that telephone  
6 companies pay for pole attachments because, due to a lack of competition or real  
7 alternatives, the marketplace obviously will not.

8 **Q.6. IN ITS RESPONSE TO BALLARD TELEPHONE'S COMPLAINT, DOES**  
9 **JACKSON PURCHASE INDICATE THAT THE COMMISSION**  
10 **DIFFERENTIATES BETWEEN INCUMBENT LOCAL EXCHANGE**  
11 **CARRIERS, ELECTRIC COMPANIES, AND CATV COMPANIES AS IT**  
12 **RELATES TO POLE ATTACHMENT RATES?**

13 A. I am aware of the language that Jackson Purchase is relying on in responding to  
14 Ballard Telephone's complaint. In Admin. Case No. 251, the Commission addressed the  
15 issue of utility pole space. It asserted jurisdiction over pole attachments by requiring  
16 both telephone and electric companies to provide utility pole space to CATV customers.  
17 Though the order applied to CATV customers, there is no reason not to interpret the order  
18 as applicable to other customers, and many reasons, as I have explained, to do just that.  
19 In Admin. Case No. 251, it is important to note that no other class of customers were  
20 requesting pole attachments; only the CATV companies were.

21 I would also like to point out that Admin. Case No. 251 does not indicate that the  
22 Commission was in any way foregoing its regulatory authority over utility pole  
23 attachment rates for other customers. To do so would result in needless duplication of

1 facilities and would result in increased rates for all customers. Jackson Purchase  
2 customers would lose the contribution from pole attachment revenues, while Ballard  
3 Telephone customers would be stuck with the costs of constructing new poles and  
4 facilities. Both the telephone and electric customers of Ballard Telephone and Jackson  
5 Purchase would have higher rates. This is precisely the result that regulation was created  
6 to avoid.

7 **IV.**

8 **RATES**

9 **Q.7. HOW WOULD YOU RECOMMEND THAT THE POLE ATTACHMENT RATES**  
10 **BE DEVELOPED FOR BALLARD TELEPHONE?**

11 A. The Commission has a statutory obligation to prescribe rates that are fair, just,  
12 and reasonable, as well as nondiscriminatory. Though this standard provides great  
13 leeway to the Commission in developing rates, the Commission has traditionally relied  
14 on cost of service as the basis for determining whether rates meet this particular statutory  
15 test. In Admin. Case No. 251, the Commission provided a specific cost methodology for  
16 determining CATV pole attachment rates. The Commission held extensive hearings in  
17 that case and the competitive situation has not changed in the interim. I do not see any  
18 reason to deviate from that methodology for any utility pole attachment customer,  
19 including Ballard Telephone.

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V.

**EVICTED FROM POLES**

**Q.8. WHAT WILL BE THE IMPACT ON BALLARD TELEPHONE AND ITS CUSTOMERS IF IT IS REQUIRED TO ABANDON THE JOINT USE OF THE UTILITY POLES OF JACKSON PURCHASE?**

A. Ballard Telephone entered the 1954 Agreement with Jackson Purchase based on fair, just and reasonable rates and it is not economic for Ballard Telephone to proceed based on the abusive monopoly rate dictated by Jackson Purchase. Eviction would have a very negative impact on Ballard Telephone's customers. Assuming that Ballard Telephone would not be precluded from using Jackson Purchase's right-of-way, Ballard Telephone would be required to engineer and construct substantial outside plant in order to provide service. Substantial expenses would be incurred in the acquisition of additional right-of-way. In addition, Ballard Telephone would be required to focus a substantial amount of equipment and labor on removing its plant from Jackson Purchase's utility poles, plus amortizing the costs associated with abandoning this equipment that cannot be reused. This entire effort would be time consuming, costly and disruptive to Ballard Telephone's operations. Mr. Parker has provided an estimate of the costs of abandoning these utility poles and reconstructing redundant Ballard Telephone facilities.

**Q.9. WOULD THERE BE ANY OTHER IMPACT ON BALLARD TELEPHONE AND JACKSON PURCHASE CUSTOMERS?**

A. Yes. I cannot believe that anyone would consider the additional poles and wires to be aesthetically pleasing. Having duplicative pole routes on their property would harm

1 both company's customers. Local rates for the customers of both companies would go  
2 up.

3 **VI.**

4 **CONCLUSIONS**

5 **Q.10. HAVE YOU REVIEWED JACKSON PURCHASE'S PROPOSED POLE**  
6 **ATTACHMENTS RATES?**

7 A. Yes. Jackson Purchase has proposed an increase in the per pole rate from \$3.00  
8 to either \$13.79 or \$17.75, depending upon the height of the pole. This increase would  
9 result in a percentage increase of approximately 460%. Again, this increase is proposed  
10 without any justification or methodology.

11 **Q.11. DOES JACKSON PURCHASE'S PROPOSED POLE ATTACHMENT RATES**  
12 **MEET THE STATUTORY TEST OF BEING FAIR, JUST, AND REASONABLE,**  
13 **AND NONDISCRIMINATORY?**

14 A. I have reviewed the information provided by Jackson Purchase and have  
15 concluded that there is insufficient cost data to determine if its proposed pole attachment  
16 rates for Ballard Telephone are fair, just, and reasonable, and nondiscriminatory. Jackson  
17 Purchase failed to provide the data necessary to prepare or analyze the cost support for its  
18 proposed rate increase. (See Exhibit 7 to the Complaint.) In lieu of providing the cost  
19 data, Jackson Purchase simply argues that its proposed rates are appropriate because  
20 BellSouth and certain TVA cooperatives have accepted them. In addition, Jackson  
21 Purchase asserts that the current rates have been in effect for a number of years with no  
22 increases so therefore a rate increase is justified. Jackson Purchase provides, however, no  
23 cost support for its proposed rate increase. The failure to provide cost support

1 demonstrates that Jackson Purchase's proposed rates do not meet the test of fair, just, and  
2 reasonable, and nondiscriminatory.

3 **Q.12. DO YOU HAVE ANY RECOMMENDATION CONCERNING THE JOINT USE**  
4 **AGREEMENT?**

5 A. Yes. As I pointed out earlier in my testimony, in a letter dated April 23, 2003,  
6 Ballard Telephone was directed by Jackson Purchase to begin removing its attachments  
7 from Jackson Purchase's poles within six-months. In addition, Jackson Purchase directed  
8 Ballard Telephone to make no new pole attachments without prior written consent of  
9 Jackson Purchase. This action will directly affect Ballard Telephone's ability to provide  
10 service to its customers. In addition, it is contrary to the 1954 Agreement. I would  
11 recommend that the Commission direct Jackson Purchase to suspend such requirements  
12 and direct Jackson Purchase to comply with the current contract pending a decision in  
13 this case.

14 **Q.13. DOES THIS CONCLUDE YOUR TESTIMONY?**

15 A. Yes, it does, and thank you.



**CERTIFICATE OF SERVICE**

It is hereby certified that the Prefiled Direct Testimony of James K. Sharpe on behalf of Ballard Rural Telephone Cooperative Corporation, Inc. was served by mailing a copy of the same by First Class United States Mail, postage prepaid, to the following individuals this 7th day of April, 2004:

W. David Denton  
Denton & Keuler, LLP  
555 Jefferson Street  
P. O. Box 929  
Paducah, KY 42002-0929

G. Kelly Nuckols  
President & CEO  
Jackson Purchase Energy Corporation  
2900 Irvin Cobb Drive  
P. O. Box 4030  
Paducah, KY 42002-4030



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**John E. Selent**  
**DINSMORE & SHOHL LLP**  
**1400 RNC Plaza**  
**500 W. Jefferson Street**  
**Louisville, KY 40202**  
**(502) 540-2300 (Office)**  
**(502) 585-2207 (Fax)**  
**john.selent@dinslaw.com (E-Mail)**

**COUNSEL TO BALLARD RURAL  
TELEPHONE COOPERATIVE  
CORPORATION, INC.**

# James K. Sharpe

## Areas of Specialization

Rates, regulatory relations, performance measurement, financial and resource planning, corporate and strategic planning, and regulatory economics.

## Relevant Experience

Lead consultant for the maintenance and repair performance measures for the Virginia Commerce Board and Maryland Public Service Commission in audit of Verizon.

Lead Consultant in the comprehensive financial review of Verizon for the Public Service Commission of New Hampshire, responsible for the financial evaluation of the company.

Served as arbitrator for the Nebraska Public Service Commission in an interconnection dispute pursuant to 47 U.S.C. Section 252 between Qwest and Level 3.

Lead consultant in compliance review of New Jersey electric utilities for the New Jersey Public Utilities Board. Reviewed electric utilities compliance with specific Board regulations.

Lead consultant in the comprehensive financial review of Verizon New Jersey Inc. (*VNJ*) for the New Jersey Board of Public Utilities, responsible for the financial evaluation.

Lead consultant in Liberty's audit of Ameritech-Ohio policies, procedures and compliance with service quality performance requirements under Ohio's Minimum Telephone Service Standards.

Lead consultant for the maintenance and repair performance measures for the Regional Oversight Committee (*ROC*), 13 of the 14 states served by Qwest.

Served as arbitrator for the Nebraska Public Service Commission in an interconnection dispute pursuant to 47 U.S.C. Section 252 between Alltel and Pathnet.

Served as arbitrator for the Nebraska Public Service Commission in an interconnection dispute pursuant to 47 U.S.C. Section 252 between AT&T and GTE.

Served as arbitrator for the North Dakota Public Service Commission in an interconnection dispute pursuant to 47 U.S.C. Section 252 between AT&T and U S WEST.

Consultant for the Kentucky Public Service Commission in Liberty's management audit of GTE South. Primary responsibilities include evaluating service quality, preparation for competition, and alternative regulation.

Consultant on a management and operations audit of New York Telephone (NYT) conducted for the New York Public Service Commission. Audit report was used in developing alternative regulation for NYT. Area of responsibility was preparing a reporting and control framework.

Consultant for Cincinnati Bell Telephone Company in preparing for a rate case in its Kentucky jurisdiction and conducting a study of community of interest for an EAS proposal.

Consultant and witness to prepare and testify for the Independent Telephone Group of Kentucky regarding a regulatory strategy for rural local-exchange competition and allocation of Universal Service Funds. Assisted with introducing new services.

Assisted the Kentucky Independent Telephone Group in the development of strategies for an administrative case dealing with intra-LATA competition.

Consultant and witness on behalf of AT&T on its petition for reduced regulation in Kentucky.

Consultant and witness for Brandenburg Telephone Company. Provided testimony on reduced regulation for small telephone companies in Kentucky.

Consultant for Cincinnati Bell Telephone Company. Responsibilities included preparing the company for a comprehensive Kentucky Public Service Commission management audit and assisting in preparation for a rate case. The management audit also included, as a point of emphasis, an evaluation of how prepared the company was in meeting the service requirements of their CLEC customers and the quality of service for residential consumers.

Consultant for Parsons Engineering in preparing an evaluation of a municipal client's telecommunications requirements, including the potential for offering various electronic-media services to the city's residents. Responsibilities included identifying the various regulatory and filing requirements for a start-up municipal telecommunications company. Assisted in evaluating the economic feasibility of various potential network configurations.

Consultant for California Public Utility Commission in an evaluation of the San Diego Gas & Electric Company's performance-based ratemaking plan.

Consultant for a Kentucky electric utility company in conceptualizing and preparing a performance-based ratemaking plan.

Consultant for Delta Natural Gas Company in preparing a demand-side management filing for the Kentucky PSC.

Consultant for the Pennsylvania's Public Utility Commission in the management audit of Pennsylvania Power and Light Company. Responsibilities included reviewing external relations, acquisition of municipal utilities, and holding-company acquisitions.

Consultant on a management audit of Columbia Gas of Ohio for the Public Utility Commission of Ohio. Areas of responsibility included affiliated interests, rates, and regulatory relations.

Consultant for Western Kentucky Gas Company in preparing and filing a major rate case. Responsibilities included providing assistance in the development of filing strategies, preparing testimony, developing alternative rate structures, and preparing witnesses for their rate hearing.

Consultant for the performance of an audit of Eastern Kentucky Power Cooperative, Inc.'s evaluation of competitive bids received for generating capacity. The purpose of the audit was to assure EKPC's management that each proposal was treated fairly (EKP offered its own proposal).

Consultant for Kentucky Utilities Company to assist in preparation for filing a certificate of convenience and necessity for the installation of gas turbine generators and evaluate DSM proposals.

Consultant for Louisville Gas and Electric Company in preparing and filing a major rate case. Responsibilities included providing assistance in the development of filing strategies, reviewing of testimony, and preparing witnesses for their rate hearing.

Consultant for Kentucky Power Company (an operating subsidiary of American Electric Power) in reviewing potential alternative rate-regulation initiatives for the electric-utility industry.

### **Other Experience**

Director, Division of Research, Public Service Commission of Kentucky. Participated as both team leader and member in the Commission's Administrative Cases dealing with competitive telephone policies. These cases established Commission policy for inter-LATA competition, intra-LATA competition, WATS Resale, Coin Telephone, and Shared Tenant Services. Served as team leader in case developing Commission's policy on incentive regulation for South Central Bell.

Public Utility Economist, Public Service Commission of Kentucky. Participated as part of Telephone Task Force which was responsible for assisting the Commission in developing telephone regulatory policy after Bell System divestiture. Prepared Commission position papers on divestiture, drafted Commission comments to the federal court, drafted Commission comments on Federal Communications Commission preemption actions, drafted Commission Orders on divestiture, and advised Commission on establishing set of access charges.

## **Education**

B.S., Economics, Murray State University

M.S., Economics, Murray State University

Ph.D., Candidate, University of Kentucky